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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,607	04/06/2001	Slobodan Vukicevic	STK/070	5821

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FISH & NEAVE  
1251 AVENUE OF THE AMERICAS  
50TH FLOOR  
NEW YORK, NY 10020-1105

EXAMINER

ROBINSON, HOPE A

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/828,607

Applicant(s)

VUKICEVIC ET AL.

Examiner

Hope A. Robinson

Art Unit

1653

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☒ Applicant's reply has overcome the following rejection(s): 112 and 102.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See the attached sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: 26, 50 and 58.Claim(s) rejected: 1-25, 27, 30-34, 47-48, 57, 59-60.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Applicant's response to the Final Office Action mailed December 23, 2003 on March 23, 2004 is acknowledged.

2. Applicant's arguments filed December 23, 2003 have been fully considered but are not persuasive.

The objection to the specification with regard to new matter has been withdrawn.

The rejection under 35 U.S.C. 112, first paragraph regarding new matter has been withdrawn.

The rejection under 35 U.S.C. 112, second paragraph has been withdrawn.

The rejection under 35 U.S.C. 102 (b) has been withdrawn.

The rejections under 35 U.S.C. 103 (a) have been maintained.

3. Claims 28-29, 35-46, 49 and 51-56 have been canceled. Claims 1, 27 and 47 have been amended. Claims 1-27, 30-34, 47-48, 50 and 57-60 are pending and under examination.

4. Claims 1-25, 30-34, 47-48, 57 and 59-60 remain rejected under 35 U.S.C. 103(a), for the reasons stated in the previous office.

Claims 1-6, 8-25, 27 and 30-34 remain rejected under 35 U.S.C. 103(a), for the reasons stated in the previous office.

5. Applicant's comments on pages 13-23 have been considered. The response addresses the references cited by Luyten et al., Celeste et al. and Cui et al. Applicant contends that the cited reference by Luyten et al. discloses the use of CDMP-1 and CDMP-2 (see page 16), and CDMP-2 is equivalent to BMP-13 or GDF-6. As these are deleted from the claims applicant contends that the reference is not relevant under 103(a). However, this argument is not persuasive because Luyten et al. also disclose BMP-2, 3, 5 etc. and disclose that BMPs are used for cartilage and bone development, thus the claimed method to repair a defect locus in a nonarticular cartilage tissue is obvious. Regarding the references cited by Celeste et al., and Cui et al., applicant contends that these references do not rectify the missing information in Luyten et al. Note that Celeste et al. teach BMPs with the same activity as disclosed in Luyten et al. and a pharmaceutical acceptable carrier such as collagen as disclosed in the instant application, thus is applicable. Furthermore, the Cui et al. reference teach the repair of thyroid cartilage defect with BMPs. Applicant's comments are directed to each individual reference and the rejection of record is based on the combined teachings of the three references. Therefore, the rejections of record are maintained because applicant's comments are not persuasive.

**Conclusion**

6. No claims are presently allowable. Claims 26, 50 and 58 are free of the prior art, however, are objected to as depending from rejected based claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hope A. Robinson whose telephone number is 571-272-0957. The examiner can normally be reached on Monday-Friday from 9:00 a.m. to 6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S.F. Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hope Robinson, MS 

Patent Examiner



KAREN COCHRANE CARLSON, PH.D.  
PRIMARY EXAMINER